IN THE HIGH COURT OF THE JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1080 OF 2004.

Shri.P.D. Pawar ...Petitioner

V/s

M/s Tarapur Greases & Ors. ...Respondents

Mr. S.R. Nargolkar for the Petitioner.
Mr. Pai i/by M/s.Sanjay Udeshi & Co.,for the Respondent No.1
Ms. R.M. Ghadvi A.P.P.

CORAM : A.S.OKA, J.
DATED : JUNE 08, 2005.

P.C.:

1. Rule. The Respondents waive service. Considering the facts and circumstances of the case, taken up for hearing forthwith. By this Petition under Articles 226 and 227 of the Constitution of India the challenge is to the orders passed by the learned Member of Industrial Court on 3rd January 2004 by which the application for condonation of delay made by the Petitioner herein was rejected.

2. The learned counsel appearing for the Petitioner submitted that the delay was only of 37 days for preferring an Appeal under Section 17 of The Maharashtra Mathadi Hamal and Other Manual Workers (Regulation of employment and Welfare) Act, 1969. He pointed out that the Appeal is filed by the Petitioner

in his capacity as the Inspector, Grocery Markets and Shops Board. He submitted that finalisation of the Appeal needed the approval of the Chairman. He submitted that for the circumstances beyond the control of the Petitioner there was delay. The learned counsel appearing for the Respondent Nos.1 and 2 submitted that the approval of the Board or the Chairman was not at all needed and, therefore, the ground incorporated in the application for condonation of delay is incorrect. He submitted that the application was very vague and there was hardly any justification incorporated in the application for delay. He supported the impugned Judgment and Order.

3. The delay is only of 37 days. Normally, a Court has to be libral in the matter of condonation of delay. Ocassion for condonation of delay arises only when there is some default on the part of a litigant. In the facts of the present case, the approval of the the Board may not be necessary for preferring an Appeal. However, it is to be noted that the ground given in the application is that memorandum of Appeal was required to be finalised and approval of the Chairman could not be taken immediately. This explanation could not have been discarded. The delay is not at all inordinate.

4. The learned member of the Industrial Court has not considered the ground for the delay as setout in the application. Justice oriented approach was expected from the learned Member of the Industrial Court. In my view, the order impugned is required to be interferred with in this Petition.

5. Hence, I pass the following order:

: O R D E R :

i) The impugned Judgment and Order is quashed and set aside and the application for condonation of delay filed by the Petitioner is hereby allowed.

ii) It is obvious that in view of this order the appeal preferred by the Petitioner will have to be considered on merits.

iii) Rule is made absolute in above terms. No order as to costs.

iv) Parties to act on an authenticated copy of this order.

JUDGE